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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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GREEN'S ADM'R et al. v. MAYRE, Auditor.

June 8, 1911.

[71 S. E. 555.]

**States (§ 61\*)—Compensation of Agents—Performance of Contract.**—The state, having claims against the federal government, appointed agents to prosecute and settle them for a percentage of the sum recovered by them. One of the agents reported to the Governor unsuccessful efforts to collect the claims, and stated that the federal government would not recognize their validity until bonds issued by the state and held by the federal government were satisfied. Subsequently the state, through the efforts of others, obtained an adjustment of the claims without any assistance from the agents. Held, that the agents were not entitled to the compensation agreed on, under the rule that, where an agent assumes to do a specified act, no compensation is earned until performance.

[Ed. Note.—For other cases, see States, Dec. Dig. § 61.\* 1 Va.-W. Va. Enc. Dig. 266; 2 Va.-W. Va. Enc. Dig. 638.]

Error to Circuit Court of City of Richmond.

Petition by the administrators of Bernard P. Green and John A. Parker against Morton Mayre, Auditor of Public Accounts, to establish a claim against the Commonwealth. There was a judgment for the Commonwealth, and petitioners bring error. Affirmed.

*E. Beverly Slater, H. R. Pollard, Hardcastle & Wynn, and Munford, Hunton, Williams & Anderson, for plaintiffs in error.*  
*The Attorney General, for defendant in error.*

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CARPENTER v. CAMP MFG. CO. et al.

June 8, 1911.

[71 S. E. 559.]

**1. Logs and Logging (§ 3\*)—Sale of Standing Timber—Deeds—Rights Acquired.**—A deed to standing timber and the right to cut and remove the same within a fixed period, and within such additional time as the purchaser may desire on paying interest on the

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\*For other cases see same topic and section NUMBER in Dec. & Am. Dig. Key No. Series & Rep'r Indexes.

price annually, gives the purchaser, after the expiration of the fixed period, a reasonable time in which to cut and remove the timber, and an additional reasonable time in which to remove the buildings, railroads, and tramways erected on the land as permitted by the deed.

[Ed. Note.—For other cases, see Logs and Logging, Cent. Dig. § 9; Dec. Dig. § 3.\* 13 Va.-W. Va. Enc. Dig. 220.]

**2. Logs and Logging (§ 3\*)—Conveyance of Timber—Reservation—Construction.**—An owner conveyed standing timber, with a right to cut and remove the timber within a specified time, and such additional time as the purchaser might desire on paying interest on the price annually. Subsequently he conveyed the land to a third person, but reserved to himself all the timber on the land previously conveyed, and all rights to the timber, whether of reversion of the timber or payments to be made by the purchaser thereof. Held, that the rights reserved must be exercised within a reasonable time after the expiration of the period fixed for the cutting and removal of the timber by the purchaser thereof.

[Ed. Note.—For other cases, see Logs and Logging, Cent. Dig. § 9; Dec. Dig. § 3.\* 13 Va.-W. Va. Enc. Dig. 220.]

**3. Deeds (§ 97\*)—Construction.**—The court, in construing a deed, must give effect, if possible, to all of its terms.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 267; Dec. Dig. § 97.\* 40 Va.-W. Va. Enc. Dig. 422.]

**4. Deeds (§ 90\*)—Construction against Grantor.**—The language of a deed must be construed most strongly against the grantor.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 235; Dec. Dig. § 90.\* 4 Va.-W. Va. Enc. Dig. 420.]

**5. Logs and Logging (§ 3\*)—Sale of Standing Timber—Deeds—Construction.**—A covenant in a deed to standing timber, which gives to the purchaser the right to build and operate railroads on the land to remove the timber, or anything else which he may wish to carry over the railroads, gives to the purchaser the right, not only to build railroads to remove the timber acquired by that deed, but to transport anything else which he may wish to carry over the railroads; and his right thereto may continue for an indefinite period, subject to such control by the courts as will prevent the rights from being exercised inequitably to the owner.

[Ed. Note.—For other cases, see Logs and Logging, Cent. Dig. § 9; Dec. Dig. § 3.\* 13 Va.-W. Va. Enc. Dig. 220.]

Appeal from Circuit Court, Brunswick County.

Suit by W. R. Carpenter against the Camp Manufacturing

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\*For other cases see same topic and section NUMBER in Dec. & Am. Dig. Key No. Series & Rep'r Indexes.

Company and others. From a decree for defendants, plaintiff appeals. Reversed in part, and remanded.

See, also, 70 S. E. 496; 17 Va. Law Reg. pp. 225, 226, where this case is reported on a former hearing.

*Marvin Smithcy* and *R. B. Davis*, for appellant.

*E. R. Turnbull, Jr.*, and *E. P. Buford*, for appellees.

MANSON & SHELL *v.* RAWLINGS' EX'X et al.

June 8, 1911.

[71 S. E. 564.]

**1. Judgment (§ 64\*)—By Confession—Entry by Clerk—Statute.**—Code 1904, § 3283, providing that in any suit a defendant may in vacation, whether the suit be on docket or not, confess judgment in the clerk's office, and that the same shall be entered of record by the clerk in the order or minute book, and be as valid as if entered in court on the day of such confession, and that the clerk shall enter upon the margin of such book, opposite where the decree is entered, the date when it was confessed, is merely declaratory of the common law, and a substantial compliance is sufficient; and hence a judgment by confession is valid, though the only memorandum be a note in the fee book of the clerk of the circuit court referring to the confession, a certificate by him to the clerk of the country court, and a memorandum by the clerk of the circuit court showing that execution was delivered to the sheriff, for a judgment is not invalid because there was no suit actually pending, or for the lack of a declaration, or for failure of the clerk to make an entry in the order book.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 64\* 3 Va.-W. Va. Enc. Dig. 67, 73.]

**2. Limitation of Actions (§ 172\*)—Effect of Bar—Joint Judgment.**—Where a joint judgment returned against two defendants was barred against the estate of one, because not enforced against the personal representative of that decedent within five years, it is not barred against the estate of the other.

[Ed. Note.—For other cases, see Limitation of Actions, Dec. Dig. § 172.\* 8 Va.-W. Va. Enc. Dig. 627.]

**3. Principal and Surety (§ 138\*)—Liability of Surety—Nature.**—The liability of a surety is the same as that of the principal; the creditor being under no obligation to look to the principal before resorting to the surety.

[Ed. Note.—For other cases, see Principal and Surety, Cent. Dig. § 387; Dec. Dig. § 138.\* 8 Va.-W. Va. Enc. Dig. 7.]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Dig. Key No. Series & Rep'r Indexes.